

Petitioner Muslim Advocates and Respondents Los Angeles Police Department (“LAPD”) and City of Los Angeles (“City”) (collectively, “LAPD”) submit supplemental briefing on the issue of (1) whether a search of responsive backup tapes is reasonable, (2) if so, whether Petitioner should be liable for costs of production of these records, and (3) whether such costs are reasonable in amount.

The court has read and considered the supplemental briefs, and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioner Muslim Advocates commenced this proceeding on July 25, 2016. The verified Petition alleges in pertinent part as follows.

Muslim Advocates is a national legal advocacy and educational organization that counters anti-Muslim bigotry, empowers Muslim communities through charity and education, and fights discrimination through litigation and policy engagement.

On October 30, 2007, Deputy Chief Michael P. Downing (“Downing”), then serving as the Commanding Officer of LAPD’s Counter-Terrorism Criminal Intelligence Bureau (“CTCIB”) (now known as Counter-Terrorism and Special Operations Bureau (“CTSOB”)), appeared before the U.S. Senate Committee on Homeland Security and Governmental Affairs. Downing discussed a recent initiative by LAPD and an academic institution to conduct an extensive community mapping project to lay out the geographic locations of the many different Muslim population groups in Los Angeles.

On November 8, 2007, Muslim Advocates joined the ACLU of Southern California, the Islamic Shura Council, and the Council on American Islamic Relations to send the LAPD an open letter expressing concern about the community mapping project. On November 14, 2007, following protests by Muslim groups and civil libertarians, LAPD announced it would drop the “Community Mapping” Program.

On December 12, 2013, Muslim Advocates’ then-Legal Director Glenn Katon sent a California Public Records Act (“CPRA”) request (the “request”) to the LAPD’s Discovery Section, directed to its custodian of records. Item No. 2 in the request sought “[a]ll records reflecting or relating to the ‘community mapping’ program, as described in the Senate Statement” of Deputy Chief Downing. The request made clear that it sought “records... for the period September 11, 2001, through the present [December 12, 2013].”

In response, LAPD asserted a 14-day extension to respond to Muslim Advocates’ request. On January 17, 2014, LAPD responded to the request. In response to Item No. 2, LAPD stated that “[t]here are no documents responsive to your request.”

On March 27, 2014, Muslim Advocates’ counsel wrote to LAPD requesting “the basis for, or a correction of, the Department’s... response to Item No. 2 of the Request... that ‘[t]here are no documents responsive to your request.’” In light of Deputy Chief Downing’s statement to the

United States Senate, it is simply implausible that no documents exist. The March 27 letter also made a supplemental request for records concerning LAPD's "effort to comply with the Request, including... [identification of] key custodians... that would be likely to maintain responsive files; Department communications regarding this request; any summaries prepared of the Request; and the name and title of the person in charge of responding to the Request".

LAPD replied to Muslim Advocates on July 2, 2014. The reply did not explain or correct LAPD's claim that no records exist relating to the Community Mapping program, nor did it provide records helpful in understanding the Department's search as sought by Muslim Advocates' supplemental request. Instead, LAPD merely repeated that "no responsive records were found."

Muslim Advocates sent another letter on August 1, 2014, seeking an explanation or correction of the LAPD's position. The letter asked LAPD to assist Muslim Advocates in identifying responsive records. Muslim Advocates made a second supplemental request, making clear that it sought records of the search terms used, electronic databases searched (as well as available databases not searched), and the paper files that were searched by LAPD in response to the initial Request. The letter also asked LAPD to "search [its] email system and other electronic databases for the term 'Community Mapping' and provide screen shots of the use of the term and databases searched." Muslim Advocates offered to "speak by phone with personnel in [the LAPD's] Information Technology Department to discuss the technical details of these searches and the Department's electronic storage systems for e-mails and records."

LAPD replied on August 19, 2014, invoked the "statutory fourteen days extension of time in which to respond," and promised a substantive response "as soon as possible." On March 16, 2015, Muslim Advocates' counsel followed up with LAPD to request a response to its letter. On March 26, 2015, the City Attorney's Office contacted Muslim Advocates' counsel and stated that it was assisting the Department in identifying responsive, non-exempt records.

On April 20, 2015, LAPD responded to the August 1, 2014 letter. LAPD did not produce any records, and agreed only to conduct a search term query of the email accounts for seven employees using the search terms "Muslim Mapping," "Community Mapping," and "Mapping Program." The search was to be limited to emails created after 2013.

Despite extensive communications between the parties, LAPD still refuses to search for the requested records from the relevant time period of 2001-2010, claiming it would be unduly burdensome to even attempt to find out which records exist. Respondents also have failed to fulfill their duty to assist Muslim Advocates in overcoming practical barriers to disclosing the records, in part by refusing to provide Muslim Advocates with indicia of the searches the LAPD has conducted in its email backups as to other time periods and subject matters.

Muslim Advocates alleges that Respondents' failure to locate records responsive to the request resulted from a search that was not a good-faith reasonable effort in violation of the CPRA. Respondents' serial delays in responding to Muslim Advocates' requests for records and follow-up correspondence also independently violate the CPRA, along with Respondents' failure to provide a reason for their determination to withhold approximately 4,495 post-2010 records stored on backed-up email, and their failure to produce attachments referred to in the five pages of post-2010 e-mail records that LAPD did disclose.

2. Course of Proceedings

On November 8, 2016, the court heard and denied Respondent City's motion to stay the

proceedings pending the resolution of appellate litigation in City of Los Angeles v. Superior Court, Court of Appeal Case No. B269525.

On October 19, 2017, the court granted the petition for writ of mandate in part. The court held that LAPD failed to make reasonable searches of the Media Relations Division and the Office of the Chief of Police. The court directed LAPD to search these two divisions. The court also found LAPD's search of the Counter Terrorism Special Operations Bureau ("CTSOB") to be inadequate and directed the LAPD to conduct a further search of this bureau consistent with its decision.

Petitioner also requested that LAPD access CTSOB's divisional files contained on backup tapes necessary to search CTSOB's shared P drives and individual G drives from 2007 and 2008. LAPD resisted this search based on undue burden. To justify its refusal to comply with a CPRA request on grounds of "undue burden," LAPD was required to demonstrate that "on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." §6255. LAPD bore the burden of demonstrating a "clear overbalance" on the side of non-disclosure. Fredericks v. Superior Court, (2015) 233 Cal.App.4th 209, 228.

In assigning weight to the public interest in disclosure, courts must look not only at the nature of the records requested, but also how directly the disclosure of such records contribute to the public's understanding of government. Humane Society of U.S. v. Superior Court, (2013) 214 Cal.App.4th 1233, 1268; Connell v. Superior Court, (1997) 56 Cal.App.4th 601, 616. The public interest in disclosure must be more than "hypothetical" or "minimal." County of Santa Clara v. Superior Court, (2009) 170 Cal.App.4th 1301, 1323-24. Also relevant is the likelihood of finding responsive records. Reyes v. EPA, (D.D.C. 2014) 991 F.Supp.2d 20, 27.

The court found that Petitioner somewhat overstated the public interest in records from a 10-year old aborted program as "formidable". The public does have an interest in obtaining records enabling it to hold LAPD accountable to its duty to enforce the law in a fair and even-handed manner. See CBS, Inc. v. Block, (1986) 42 Cal.3d 646, 656 (CPRA's goal is, among other things, to permit citizens to hold the government to account by "ascertain[ing] whether the law is being... carried out in an evenhanded manner."). That interest is furthered by disclosure of relevant Community Mapping program records, regardless of whether or how long the program was implemented. That public interest is lessened by the brevity of the program and the passage of time. There remained, however, a substantial public interest in learning about the process by which the Community Mapping program was proposed and developed, and how far LAPD went in implementing the program before it was shut down.

The court found the burden to LAPD in searching the backup tapes is significant, but not necessarily undue. Depending on the amount of effort that will actually prove necessary, LAPD's burden in accessing the CTSOB backup tapes does not necessarily outweigh the public interest in disclosure; it depends on how many catalogued tapes contain CTSOB files. The court directed LAPD to perform an initial one hour evaluation of the 284 catalogued tapes to search for CTSOB files and determine the precise number of backup tapes containing CTSOB divisional files, which may or may not be the estimated 24 tapes.

Once LAPD determines how many tapes must be searched, and if the court determines that a search of that number of tapes is reasonable, there remains the issue of cost. Generally, the agency may charge only the direct costs of copying records. §6253(b). Ancillary costs of

retrieving, inspecting, and handling those records may not be charged to the requestor. Fredericks v. Superior Court, (“Fredericks”) (2015) 233 Cal.App.4th 209, 236. A statutory exception exists when the agency (1) must produce a copy of an electronic record between “regularly scheduled intervals” of production, and (2) when compliance with the request for an electronic record “would require data compilation, extraction, or programming to produce the record. §6253.9(b). The parties did not address section 6253.9(b) in their briefs, but the effort to restore CTSOB divisional files on the backup tapes and search for Community Mapping program documents is just the type of extraction and/or programming effort that is within the statute’s scope and for which the cost should be shifted. The pertinent cost issues are the amount claimed by LAPD for the ancillary costs and how they were calculated. *See County of Santa Clara*, (2009) 170 Cal.App.4th 1301, 1337. The court continued the hearing and directed the parties to address the reasonableness of any charges LAPD wishes to impose for ancillary electronic record retrieval. *See Fredericks, supra*, 233 Cal.App.4th at 238.

The court denied the petition in all other respects finding that the undue burden of further search efforts clearly overbalanced the public interest.

B. Statement of Facts

1. Community Mapping Project

Mark Stainbrook (“Stainbrook”) served as the adjutant to retired Deputy Chief Downing in The Counter Terrorism Criminal Intelligence Bureau (“CTCIB”), a precursor to CTSOB, from October 2007 to August 2010. Stainbrook Decl. ¶2. In this role, Stainbrook assisted Downing in the development and implementation of CTCIB objectives and managing administrative paperwork. *Id.* Stainbrook would have been responsible for the planning and organizing related to community mapping, including maintenance of records relating to the project if it had gone forward. Stainbrook Decl. ¶5.

In fall 2007, Downing and Stainbrook discussed the idea of academic community mapping as a way to conduct more effective community outreach with Muslim communities in Los Angeles. Stainbrook Decl. ¶3. The project never advanced beyond the idea stage. *Id.* It was shelved after Downing’s statement to the U.S. Senate on October 30, 2007. *Id.*, Ex. A.

Before the project was shelved, Stainbrook drafted a paper titled “Muslim Community Engagement Initiative, White Paper, November 2007.” Stainbrook Decl. ¶4, Ex. B. The purpose of the paper was to organize Downing’s thoughts about community mapping and ensure that Downing and Stainbrook agreed on the project goals. *Id.* Other than this “White Paper,” Stainbrook did not draft, nor is he aware of, any documents that provide substantive information about the short-lived project. Stainbrook Decl. ¶5. Stainbrook would have drafted or reviewed all documents relating to the project. *Id.*

Most of the discussion within CTCIB about the project were conversations between Stainbrook and Downing. Stainbrook Decl. ¶6. Conversations about the project with other members of CTCIB were non-substantive. *Id.* No other CTCIB officers were involved in the minimal work that went into the project. *Id.*

Stainbrook did not create any physical folders or files with respect to the project. Stainbrook Decl. ¶7. Any electronic records created with respect to the project would have been non-substantive in nature and would have been saved on the divisional server. *Id.*

2. Supplemental Search

Following the court's ruling on October 19, 2017, the court ordered LAPD to conduct searches of the Media Relations Division, the Office of the Chief of Police, and CTSOB.

Norma Eisenman ("Eisenman") conducted a search of Media Relations Division's files for records concerning a community mapping program. Eisenman Decl. ¶2. Eisenman's search of the Media Relations Division's "P" drive yielded no responsive records, Eisenman's search through hard-copy books for new releases and news advisories for the year 2007 yielded no responsive records, and Eisenman's search for news releases and advisories on LAPD Online yielded no responsive records. Eisenman Decl. ¶¶ 3, 5-6. These searches took Eisenman approximately 30 minutes to conduct. Eisenman Decl. ¶7.

Jacqueline McAndrews ("McAndrews") retrieved the Office of the Chief of Police's 2007 hard copy files and folders. McAndrews Decl. ¶3. McAndrews reviewed the contents of these boxes and forwarded responsive records to the City Attorney's Office. *Id.* The review of the contents of these boxes took McAndrews approximately five hours. *Id.*

Michael Seguin ("Seguin") was assigned to conduct a supplemental search for CTSOB records responsive to Petitioner's request. Seguin Supp. Decl. ¶2. Seguin located one box of archived documents that mentioned "mapping" and ten total boxes containing CTSOB 2007 hard-copy files. Seguin Supp. Decl. ¶3. Seguin examined these files and forwarded responsive records to the City Attorney's Office for review. Seguin Supp. Decl. ¶4. The whole process took Seguin approximately five to six hours. *Id.*

In late October 2017, Linda N. Nguyen ("Nguyen"), a Deputy City Attorney, asked Anthony Huynh ("Huynh") from the LAPD Information Technology Division to perform a search of the following terms: (1) mapping, (2) community mapping, (3) Muslim mapping, and (4) Senate statement. Nguyen Supp. Decl. ¶2. This search sought examination of the title and content of electronic records stored on the following drives: (1) the CTSOB's shared "P" drive; (2) Downing's individual "G" drive; (3) Mark Stainbrook's individual "G" drive; (4) the Office of the Chief of Police's shared "P" drive; (5) Chief of Police's William J. Bratton's individual "G" drive; and (6) the Media Relations Division's shared "P" drive. Huynh Supp. Decl. ¶4; Nguyen Supp. Decl. ¶2.

On November 8, 2017, Huynh performed the search. Huynh Supp. Decl. ¶4. The search took Huynh three work days or 24 hours to conduct. *Id.* 16 of these 24 hours consisted of computer processing time that allowed Huynh to conduct other minor tasks like emailing and returning calls. *Id.*

On November 15, 2017, Huynh provided Nguyen with approximately 700 electronic files that possessed one or more of the aforementioned search terms. Huynh Supp. Decl. ¶4; Nguyen Supp. Decl. ¶3. Between November 2017 and January 2018, Nguyen reviewed these files to determine if any were responsive to Petitioner's CPRA request for records relating to the LAPD's community mapping program. Nguyen Supp. Decl. ¶4. Nguyen spent approximately 16 hours reviewing these files. *Id.*

On December 12, 2017, January 5, 2018, and January 8, 2018, Nguyen sent letters to the attorneys of record for Petitioner with information regarding the results of the supplemental search. Nguyen Supp. Decl. ¶¶ 5-7, Exs. A-Z. Attached to these letters, Nguyen sent Petitioner any files which she concluded to be responsive to Petitioner's request. *Id.* Nguyen did not withhold any of these responsive files pursuant to a CPRA exemption. Nguyen Supp. Decl. ¶4.

3. Backup Tapes Restoration and Search

Following the court's ruling, Rachel McClain ("McClain") spent approximately 1.5 hours cross-referencing the contents of 284 catalogued magnetic tapes to determine if any contained backed-up divisional files from CTCIB. McClain Supp. Decl. ¶2. McClain located a total of 16 tapes; 13 of the tapes pertained to 2007 and three pertained to 2008. *Id.*

McClain is the most qualified person with LAPD to restore these divisional files. McClain Supp. Decl. ¶7. McClain's hourly rate is \$50.68. *Id.* McClain estimates that it would take approximately four hours to *restore* each drive, two hours of which would be computer processing time that would not require her full attention. McClain Supp. Decl. ¶5. If LAPD is ordered to restore all 16 tapes, it would take approximately 96 hours, half of which would be computer processing time. McClain Supp. Decl. ¶6. Any multitasking that McClain would be able to do would be limited to checking emails and returning calls. *Id.*

If the court orders a restoration of these files, Huynh will be assigned to do the *search* portion of that order. Huynh Supp. Decl. ¶6. Huynh estimates that a search through divisional files restored from the backup tapes for the aforementioned terms will take about 4.5 hours per drive. Huynh Supp. Decl. ¶5. This time estimate excludes re-creation of the directories and folders located within the backup tapes. *Id.* Rather, it would include a search of only Word, PDF, and MS Excel files. *Id.* Three of the 4.5 hours would be computer processing time that would allow Huynh to simultaneously conduct other minor tasks. *Id.* Huynh's hourly rate is \$70.29. Huynh Supp. Decl. ¶6.

D. Analysis

LAPD has performed the supplemental search required by the court and produced all records identified as responsive to Petitioner's request, as well as some non-responsive records. It took 51 hours to conduct the supplemental search and LAPD produced 300 pages of additional documents. Petitioner does not quarrel with the adequacy of the supplemental search.

Petitioner and Respondent LAPD submit supplemental briefing on the issues of (1) whether a search of responsive backup tapes is an undue burden, (2) if so, whether Petitioner should pay for the cost of record retrieval and production, and (3) the reasonable amount of such costs.

1. Reasonableness of Backup Tape Search

LAPD argues that restoration and search of these CTSOB files from backup tapes imposes an undue burden on LAPD. Resp. Supp. Br. at 5. LAPD argues that restoring and searching for these files would require a huge expenditure of LAPD resources. Resp. Supp. Br. at 6.

For the restoration, LAPD has identified 16 backup tapes containing 24 individual drives. McClain Supp. Decl. ¶2. McClain would need approximately four hours to restore each drive and 96 hours to restore all 24 drives. McClain Supp. Decl. ¶¶ 5-6. McClain admits, however, that half of this time would be computer processing time which would enable her to multi-task. McClain Supp. Decl. ¶6. Because McClain works at an hourly rate of \$50.68, the estimated total cost of the restoration work would be \$4,865.28. McClain Supp. Decl. ¶7.

For the search, Huynh estimates that he would need approximately 4.5 hours to search key terms in the divisional files for each drive and 108 hours to search all drives. Huynh Supp. Decl. ¶5. Huynh admits, however, that three of the 4.5 hours could be spent simultaneously conducting

other minor tasks. *Id.* Because Huynh works at an hourly rate of \$70.29, the estimated cost of the search is \$7,591.32. Huynh Supp. Decl. ¶6. In total, LAPD would therefore be required to work an estimated 204 hours at a total cost of \$12,456.60.

LAPD also argues that the search of these backup tapes has a minimal likelihood of yielding any substantive responsive records. Resp. Supp. Br. at 7. All documents related to the community mapping program would have been drafted or reviewed by Stainbrook and no other substantive information pertaining to the program exists aside from the White Paper and Downing's Senate Statement. Stainbrook Decl. ¶5, Ex. A. Stainbrook opines that any electronic records found in these back-up tapes would therefore be non-substantive in nature. Stainbrook Decl. ¶7.

LAPD also points to the recent supplemental search of the Media Relations Division, Office of the Chief of Police, and CTSOB. Resp. Supp. Br. at 8. The supplemental search required 50 hours of work by eight LAPD individuals and only yielded a meager number of responsive records. *Id.* Only eight records were created around or near the fall of 2007 when Downing introduced the program and none of them contained substantive information. *Id.* LAPD contends that these records confirm that this program was shelved quickly and without opportunity for the creation of substantive records. *Id.*

Petitioner finds fault with LAPD's assertion that the requested backup tapes search has a minimal likelihood of finding any substantive responsive records. Pet. Supp. Br. at 7. Petitioner contends that LAPD is not entitled to curate records for public access based on a "substantive" versus "innocuous" distinction. *Id.*

Petitioner misconstrues LAPD's point. If the requested record search is likely to generate non-substantive documents, there is less public interest in conducting it, which can affect the balance of public interest and weigh against disclosure.

Petitioner contends that LAPD's supplemental search did not produce only innocuous documents, and provided new information about the program shedding light on LAPD's conduct, and cites the information it contends to be pertinent. Pet. Supp. Br. at 8.

An LAPD PowerPoint Presentation on Countering Violent Extremism The Presentation features a slide titled "Failing Forward, 2007" stating that isolated communities are more susceptible to extremist ideology and contending that police could go into these communities to head off potential problems by offering access to government and social services. Supp. Resp. at 8; Nguyen Supp. Decl. Ex. O, Supplemental Disclosures ("SD") 214. The same slide states: "Without a community mapping blueprint and methodical community engagement strategy, our outreach efforts will be sporadic. Our counter-narrative will be empty of meaning, leaving us talking about, rather than talking with, this community." *Id.*

An undated conference proposals submitted by Usha Sutliff ("Sutliff") refers to the community mapping project as "interesting." Nguyen Supp. Decl. Exs. K, L, N. Sutliff also mentions that a representative from the "Met" will talk about their community-mapping project. Nguyen Supp. Decl. Ex. N.

An LAPD-LINCT International Counter-Terrorism Conference dated April 4-6, 2012 characterizes "Community Mapping" as making it easier for some countries' law enforcement to understand the makeup of a community, such that they are able to direct resources in a more effective way. Nguyen Supp. Decl. Ex. H., SD 76.

An LAPD PowerPoint presentation regarding Countering Violent Extremism, which post-

dates Downing's Senate statements, states in broad terms that the public viewed the plan as a civil rights violation, racial and religious profiling, and damaging community trust. Nguyen Supp. Decl. Ex. S, SD 253 (noting a news article dated November 15, 2007).

CTCIB Staff Meeting notes dated October 10, 2007, although difficult to read, discuss "risk factors" like "age, demographic[s], employment, [and] academia" and appear to single out "Jordan" as a Muslim country. Nguyen Supp. Decl. Ex. U.

Petitioner argues that these documents show that LAPD worked with other law enforcement agencies, either before or after the community mapping program, to incorporate community mapping concepts in training programs. Pet. Supp. Br. at 9. These supplemental records contain contextual details about LAPD's motives, perception, and responses towards the community mapping project. *Id.* As Petitioner points out (Pet. Supp. Br. at 9), these records make it likely that some similar information will be found on the backup tapes.

Petitioner addresses LAPD's financial burden. Petitioner notes that LAPD has winnowed down the 284 putative backup tapes to 16. Pet. Supp. Br. at 10. LAPD admits that restoration and search of these tapes would only take 84 hours of *active* staff time. *Id.* Petitioner contends that a charge for the hours of non-activity during the automated machine time is not a legitimate cost since LAPD staff may attend to other duties during the automated processes. Pet. Supp. Br. at 11. While LAPD asserts that staff must be in another building away from their work station during the computer processing and can only use their cell phones for emails and phone calls, there is no reason why the employees cannot be given a laptop to work on or set up a temporary workstation for multitasking. *Id.*

Petitioner's points are well-taken. When the court continued this matter for examination of the reasonableness of the restoration and search of these backup tapes, LAPD contemplated 283 tapes potentially having relevant information. This number has been reduced to 16. The total of 3.5 days of *active* staff work to restore and search these tapes, while not *de minimis*, is also not *per se* cost-prohibitive under the CPRA.

In sum, Petitioner has shown that there remains a public interest in the restoration and search of the back-up tapes, the search is likely to produce some pertinent documents. The burden imposed on LAPD for this effort, while significant, does not clearly outweigh the public interest.

2. Responsibility for Costs

The CPRA requester shall bear the cost of producing a copy of an electronic record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when the request requires data compilation, extraction, or programming to produce the record. §6253.9(b).

Petitioner contends that section 6253.9(b) only allows the agency to shift costs with respect to *producing* a copy of a record and does not include time spent *searching* the tapes. Pet. Supp. Br. at 11-12. In other words, Petitioner believes that section 6253.9 only covers restoration, not search, of the backup tapes. *Id.* Petitioner relies on principles of statutory construction. Pet. Supp. Br. at 12. Petitioner contends that the legislature's use of terms like "search for," "examine," and "determine" elsewhere in CPRA indicates an intent to exclude such costs when it used the term "produce" here. *Id.* Petitioner relies on legislative history of section 6253.9(b), which discusses the cost to a requester of obtaining a paper copy of a voluminous electronic record. California Bill Analysis, A.B. 2799 Sen., 6/27/2000. Petitioner also refers to Attorney General Opinion No. 04-

1105, (“Opinion”) (2005) 88 Ops.Cal.Atty.Gen. 153. Petitioner contends that both prohibit the recovery of costs for searching for public documents. Pet. Supp. Br. at 13.

Generally, the CPRA allows the agency to charge only for the cost of copying a record. §6253(b). The ancillary cost of retrieving, inspecting, and handling material to be prepared for disclosure may not be charged to the requester. Fredericks, *supra*, 233 Cal.App.4th at 236. However, when electronic records are requested, the statute allows the recovery of ancillary costs where, as here, compliance would require data extraction or programming to produce the record. §6253.9(b)(1), (2). In that case, the agency may charge “the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record....” *Id.* Fredericks, *supra*, 233 Cal.App.4th at 237. The court may condition the disclosure upon an additional imposition of fees and costs over and above the direct duplication costs. Fredericks, *supra*, 223 Cal.App.4th at 238. The court may impose this ancillary cost after determining the reasonableness of any fiscal burdens from the requested disclosure. *Id.* See also North County Parents Assn. v. Department of Education, (“North County”) (1994) 23 Cal.App.4th 144, 148 (concurring and dissenting opinion that any access to public records may be circumscribed in appropriate circumstances by costs of search, redaction as well as copying).

The legislative history¹ and Attorney General Opinion² are not particularly helpful and are unnecessary in light of Fredericks. Under Fredericks, where the electronic records must be restored before search, the court may impose ancillary costs based on an assessment of public interest balancing. These ancillary costs are not limited to the cost of restoration and may include any cost necessary for the record production. In this case, the balancing of public interests works in favor of searching the backup tapes, but only if Petitioner pays the full cost of restoring and searching the backup tape information. The information that is likely to result, while subject to disclosure, is not sufficiently significant for LAPD to bear the cost of search.

Based on a balancing of public interests, Petitioners must pay for restoration *and* search

¹ The same legislative history cited by Petitioner states the following under the apt heading “Costs of reproduction of records: what requester pays for”: “The bill would specify the copying costs that a request would pay:...b) If the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.” *Id.*

² In the Opinion, the Attorney General noted that the direct cost to produce the record does not include ancillary tasks of retrieval, inspection, and file handling. *Id.* (citing the majority opinion in North County). However, where the request involves data compilation extraction and programming, the fee may additionally include the data cost to construct the record, the cost of programming and computer services necessary to produce a copy of the record. §6253.9(b). The Attorney General stated that the fee under section 6253.9(b) “may not include expenses associated with the county's *initial gathering* of the information, or with initial conversion of the information into an electronic format, or with maintaining the information.” *Id.* at *8 (emphasis added). The Opinion did not purport to address the cost of a computer search as part of document restoration and production under section 6253.9(b). The Opinion merely pointed out that the fee may not include expenses incurred in *initially* acquiring the information, which in that case meant fees pertaining to the creation and maintenance of a parcel boundary map. *Id.* at *8.

costs for the backup tapes.

3. Reasonableness of Costs

Petitioner contends that the costs sought by LAPD are unreasonable as LAPD admits that its staff can perform other tasks during a portion of their performance of the work. Pet. Supp. Br. at 13.

The court agrees. LAPD's personnel can bring a laptop or LAPD can set up a work station during the "computer processing time" where the employees are simply waiting for a result. In light of this factor, half of McClain's \$4,865.28 restoration time cost (\$2432.64) and 2/3 of Huynh's \$7,591.32 search time cost (\$5,010.27) will be deducted from LAPD's total requested cost of \$12,456.60. This results in a total cost of \$5,013.69 (\$2432.64 plus \$2581.05). In addition, Petitioner must pay the cost of any equipment and materials LAPD needs to purchase to restore and search the CTSOB files. Whether LAPD can honor Petitioner's request to search the backup tapes in stages is an issue for the parties to negotiate.

E. Conclusion

A search of the backup tapes is reasonable, but a balancing of public interests requires that Petitioner pay LAPD's restoration and search costs pursuant to section 6253.9(b). Petitioner's total cost is \$5,013.69 plus the cost of any equipment and materials LAPD needs to buy to restore and search the CTSOB files.